clear it ought to be decided at once. Please see *Allport* v *Scientists Corp.*[7]

A mandatory injunction can be granted on an interlocutory application before trial, when there are special circumstances, which existed in this case, as stated in the above paragraph; whereby it was granted I did not think it appropriate to impose a condition providing for the usual undertaking as to damages as I decided that the case ought to be decided at once, it being so clear and beyond doubt. I therefore made an order in terms as stated earlier.

Application granted.

Solicitors: *KC Lai & Co; R Naidu & Co.*

Reported by *PS Ranjan*

N Vijaya Kumar s/o Narayanasamy v Voon Chen Lim

HIGH COURT (IPOH) - CIVIL SUIT NO 25-748-86
ABDUL MALEK J
18 MAY 1989

Damages (Personal Injury or Death) - Accident - Head-on collision - Liability of parties - Quantum of damages - Pre-trial damages - Loss of future earnings - Civil Law Act 1956, s 28A(2)(d)

Tort - Accident - Head-on collision - Liability of parties - Quantum of damages - Pre-trial damages - Loss of future earnings - Civil Law Act 1956, s 28A(2)(d)

The parties were driving in opposite directions and were involved in a road accident. Each party had insisted that the other had encroached onto his path causing the accident. The plaintiff alleged that the defendant was overtaking a motorcyclist while the defendant alleged that the plaintiff was avoiding the manholes on his side of the road.

Held, finding the defendant 80% liable:

(1) On the evidence, the court was inclined to accept the plaintiff's version as the glass pieces in the sketch plan were found on his side of the road preceding the diagonally slanting tyre marks in the plaintiff's direction. The manholes were further away in terms of the plaintiff's direction and it is highly unlikely that he would have begun to avoid them from such a long distance.

(2) The plaintiff is liable to a certain extent for not seeing the oncoming car earlier despite the fairly straight road, and in not being able to avoid the accident as he had not seen it earlier than he did.

(3) The plaintiff's evidence of his earnings was amply corroborated and the court found no reason to reject the evidence. The award for the pre-trial period of four years was $500 x 48 = $24,000.

(4) Section 28A(2)(d) of the Civil Law Act 1956 provided that the multiplier would be 16 minus the pre-trial period. In view that the plaintiff would not be in a position to obtain any employment the award of future earnings would be $500 x 12 x 12 = $72,000.

(5) The following awards were made for the injuries sustained:

(a) lacerated wound over the dorsum of the right hand with cut extensor tendons to the little and middle fingers - $9,000
(b) 10 cm long lacerated wound over the palm of the right hand and fracture of the third metacarpal of the right hand - $3,000
(c) premature wound on the right shin and fracture of the right shaft of the right tibia-fibula - $17,000
(d) lacerated wound on the right fourth toe - $2,000

Legislation referred to
Civil Law Act 1956 s 28A(2)(d)

Ranjit Singh for the plaintiff.
Jeevapragasan s/o Sambasivam for the defendant.

Cur Adv Vult

Abdul Malek J: The accident between the plaintiff's motorcycle AAA 5491 and the defendant's motorcar AAE 7691 had taken place on 7 May 1985 at about 8.30pm (not am as in the statement of claim) along Jalan Sungai Pari, Ipoh. The plaintiff was travelling from Jalan Connolly towards Buntong whereas the defendant was from the opposite direction. As is usual in collision cases between vehicles from opposite directions, each party had insisted that it was the other who had encroached onto his path causing the accident.

According to the plaintiff, the defendant's car had encroached onto his path while overtaking a motorcycle in front of it. His evidence on this point had been corroborated by the rider of that motorcycle (PW2) who had seen how the collision took place. Both maintained that there were double lines in the centre of the road. The defendant in his testimony denied the existence of a centre white line as the road had just been resurfaced and the investigating officer (PW4) was not questioned on this. Neither was this fact recorded on the sketch plan. The defendant had alleged that the plaintiff had encroached onto his path to avoid a manhole and he also admitted that he was travelling in the middle of the road.

As regards the presence of the centre lines, I was more inclined to accept the version of the defendant as he was supported by the neutral evidence of the sketch plan and also because he had admitted travelling in the middle of the road which was probably due to the non-existence of the centre lines. However, as for where the impact took place, I was more inclined to accept the version of the plaintiff as, apart from the fact of PW2's supporting evidence, the glass pieces in the sketch plan were found on his side of the road preceding the diagonally slanting tyre mark 25 ft long if one is travelling in the plaintiff's direction. This could only denote the probability of the truth of the plaintiff's version as compared to that of the defendant's. Even the defendant's witness (DW3), who had investigated into the matter, was of the opinion that the defendant was to be blamed for the accident. As for the manholes on the road, they are further away in terms of the

plaintiff's direction, and it is highly unlikely that he would have begun to avoid them, as alleged by the defendant, from such a long distance.

In the event, I found that the defendant was liable for the accident. However, as the plaintiff had stated that he only saw the car the first time 30 ft away despite the fairly straight road, I would hold that he was liable to a certain extent in not seeing the oncoming car earlier and in not being able to avoid the accident as he had not seen it earlier then when he did. On these facts, I held that the defendant was 80% liable and the plaintiff 20% liable.

On quantum, items 1 to 7 under special damages amounting to $1,005 had been agreed to while the plaintiff was giving evidence. In addition, both counsel had also at that stage agreed to the medical report from Lopez Orthopaedic Clinic dated 21 October 1988 for $300 (new item 12) and the three receipts from Medan Polyclinic and Surgery dated 10 November 1987 for $20, 11 December 1987 for $8 and 21 August 1988 for $15 totalling $43 (new item 13). As for items 9, 10 and the new item 11 under special damages, from the records items 9 and 11 had been agreed to and I had made the awards of $2,000 for item 9 and $2,143.48 as in the relevant receipt, and not $2,243.48 as mentioned by counsel for the plaintiff, for item 11. As for item 10, I was of the view that no award could be made as there has been no formal documentary proof of the said item.

For item 8, the plaintiff (PW1) had stated that he was earning $25 to $30 a day for working every day of the month loading and unloading flour bags and he was amply corroborated on this fact by his ex-employer PW3. PW3, however, could not produce the relevant documents as they have been burnt in a factory fire but in the absence of evidence to the contrary and despite counsel for the defendant conceding to only $300 a month as the plaintiff's earnings, I found no reason to reject the evidence of PW1 and PW3 and was of the considered opinion that the plaintiff could have earned an average of $500pm. As four years had passed since the accident, I made an award of $500 x 48 = $24,000 for the pre-trial period.

As for loss of future earnings, in view of the fact that the plaintiff was aged 25 at the time of the accident and in line with s 28A(2)(d) of the Civil Law Act 1956 (hereinafter 'the Act') which came into force on 1 October 1984, the multiplier would be 16 minus the pre-trial period of four years. At $500 a month and being of the view that the plaintiff would not be in a position to obtain any employment as a result of his injuries, the award for loss of future earnings would be $500 x 12 x 12 amounting to $72,000. I am of the view, as had been decided in other cases before me, that for accidents after the amendment which came into force on 1 October 1984, the award should be based on a direct multiplication of the multiplier fixed by the amendment to the Act and not on the annuity tables as had been the practice before the law was amended. I must add that I was not impressed with the evidence of the insurance loss adjustor (DW3) as to the plaintiff's possible ability to get employment and the fact that he was selling fruits, based on his experience of buying three coconuts or palm tree coconuts or palm fruit from the plaintiff for Thaipusam, and that he was working as a watchman at a construction site for ten months in 1988. I had rejected the defence application to accept the statutory declaration of the employer who employed the plaintiff at the construction site as I found no provision under the law to enable me to do so considering that the only excuse he gave for not coming to court, despite the adjournments to call him, was because he was working in Pahang. DW3 had also spied on the plaintiff on at least four occasions but had told the court that he was not successful in taking photographs of the plaintiff not wearing a raised shoe or using crutches or selling the fruits. In the event, I held that the plaintiff was not able to work at all as a result of the injuries sustained in the accident.

Both counsel had referred to several case authorities, as regards the awards to be made for the injuries sustained by the plaintiff, some of them common to both, and after comparing the injuries in this case to those sustained in those cases, I was of the opinion that it would be fair and adequate to make the following awards. For the lacerated wound over the dorsum of the right hand with cut extensor tendons to the little and middle fingers I made an award for $9,000; for the 10 cm long lacerated wound over the palm of the right hand where x-rays revealed a fracture of the third metarcarpal of the right hand I held that $3,000 was sufficient; for the premature wound on the right shin where x-rays revealed a fracture of the shaft of the right tibia-fibula I felt that $17,000 was appropriate and for the lacerated wound on the right fourth toe I considered $2,000 to be a reasonable award.

I had also awarded interest at 4% on special damages from the date of accident to the date of judgment and at 8% on general damages from the date of service of writ to the date of judgment except future losses. All awards are on 100% liability. I further ordered that costs were to be taxed.

Order accordingly.

Solicitors: *Ranjit Singh & Co; Lawrence, Dhillon & Associates.*

Reported by *Yap Shao Sin*